THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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WRIT PETITION NO : 13058 of 2003

Dated: 06-09-2005

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Between:

Pulipati Ramaiah and others.

..... PETITIONERS

AND

The District Collector, Kurnool and others..

(Respondents 6 and 7 are impleaded as per the Court Order dated 17-2-2003 in W.P.No.13058 of 2003)

..Respondents.

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 13058 of 2003

ORDER:

This writ petition has been filed by the petitioners, who are nine in number, with a prayer to issue an appropriate writ, order or direction, more particularly one in

the nature of writ of mandamus to declare that the notice issued under Section 12(2) of the Land Acquisition Act, 1894 (for short' the Act') by the Revenue Divisional Officer-cum-Land Acquisition Officer, Kurnool- second respondent to the petitioners, as illegal and contrary to the provisions of the Act.

2. The petitioners are owners of Ac:15-16 cents comprising Sy.Nos.1552/35/A2A, A2B, A2C, 1552/7, 2B, 1526/2 and 415/2 etc., situated in Sripathiraopet village and Pinnapuram village of Atmakur Mandal. Their lands were taken possession by the Minor Irrigation Department for construction and expansion of a minor irrigation tank named as Padma Raju tank. No proceedings were initiated for acquisition of the lands under the Act. The petitioners protested the same. Thereafter, notifications under Section 4(1) and Section 6 of the Act were published in Kurnoor District Gazette dated 16-7-1999. The notifications disclose the extent of land as well as number of trees existing in the said land. When the Land Acquisition Officer failed to complete the process of acquisition proceedings, the petitioners filed W.P.No.6497 of 2001 and W.P.No.20026 of 2001. Both the writ petitions came to be disposed of on 20-11-2001 directing the petitioners to file a claim petition before the Land Acquisition Officer on or before 15-12-2001 and thereupon, the Land Acquisition Officer was directed to make an enquiry and pass award within three months from 15-12-2001. The Land Acquisition Officer was also directed to pay interim compensation under Section 17(3-A) of the Act. The petitioners filed claim petitions on 12-12-2001 claiming compensation under the provisions of the Act. When the award was not passed, a contempt case came to be filed by the petitioners and whereas, the Land Acquisition Officer filed review applications being Rev.W.P.M.P.No.32018 of 2002 and Rev.W.P.M.P.No.3207 of 2002. Both the review applications came to be dismissed on 12-12-2002. The relevant portion of the order passed in the review applications is as follows:

> "These two review applications have been filed to review the orders passed in the writ petitions on 20-11-2001.
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> No review as sought for by the petitioners is required to be granted for the reason that this Court had clearly observed in the order that it was left open for the petitioners to make claim applications before the Land Acquisition Officer, who has to make enquiry and pass award within a period of three months from the date of filing of such claim petitions. In the narration of facts, this Court only recorded the statement made by the petitioners in the affidavit about the existence of the number of eucalyptus

> trees. It is always open for the department to lead contra evidence with regard to the number of eucalyptus trees and their age, which was in existence at the time of their acquisition. It is now made clear that if petitioners make any such applications for payment of any amount lying to the credit of the Land Acquisition Officer, the said authority should consider the same and pay the amount as per the award to the lawful claimants. It is also made clear that the land acquisition proceedings shall be completed within a period of three months from the date of receipt of copy of this order in this review petitions, if not already completed".

Consequent to the dismissal of the review applications, the contempt case also came to be closed on the even date. While so, the second respondent passed an award dated 1-7-2002 and thereafter, notices have been sent to the petitioners under Section 12(2) of the Act. Hence, the writ petition.

3. A counter-affidavit has been filed by the respondents.

4. Respondents 6 and 7 came to be impleaded as per the orders dated 17-2-2003 and 7the respondent filed separate counter-affidavit. The sum and substance of the counter-affidavits is that the Land Acquisition Officer passed an award after issuing notices under Sections 9(1) and 10 and 9(3) and 10 of the Act and therefore, it is in accordance with the provisions of the Act.

5. Heard the learned senior counsel appearing for the petitioners and the learned Government Pleader for Land Acquisition appearing for the respondents.

6. The learned senior counsel appearing for the petitioners submits that the very notice under Section 9(3) of the Act is not in accordance with the provisions of the Act. He further submits that the notice allegedly given under Section 9 is defective for want of 15 days clear notices. In elaborating his arguments, he submits that even according to the respondents, notices have been served on some of the petitioners on 26-5-2002 asking them to be present before the Land Acquisition Officer on 30-5-2002 and whereas, 15 days clear notice is required under Section 9(2) of the Act. It is useful to extract Section 9(2) of the Act and it is thus:

> "Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice),

> and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurement made under Section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent".

7. It is acceptable from the above referred section that 15 days clear notice to the interested persons is required. Various other submissions have been made with regard to the principle of resjudicata. In view of the order proposed to be passed, the other submissions are not required to be referred.

8. Learned Government Pleader for Land Acquisition appearing for the respondents submits that an award has been passed in accordance with the provisions of the Act and therefore, it needs no interference.

9. Let me look at the award dated 1-7-2002. The background facts are required to be noted before recording the contents of the award. The third respondent took possession of the land of the petitioners in the year 1989. They have been making hue and cry that the authorities have taken possession of their lands without passing any award and without paying any compensation. They approached this court twice and an elaborate order came to be passed in the above writ petitions giving liberty to the petitioners to submit their claim applications, and directing the Land Acquisition Officer to consider their claims and pass appropriate award. It is also to be noted that initially lands along with the trees were notified under Section 4(1) and 6 of the Act on 24-7-1999. Subsequently, another notification was issued deleting the trees, that too, without giving notice to the petitioners.

10. At this juncture, learned senior counsel appearing for the petitioners submits that once a notification has been issued, the Collector has no jurisdiction to issue withdrawal notification after taking over the possession of the land. A reference has been made to the judgment of a single Judge of our High Court in ***DIRECTOR, RURAL DEVELOPMENT VIKARABAD, RANGAREDDY DISTRICT V. DEPUTY SECRETARY TO GOVERNMENT OF ANDHRA PRADESH, TRANSPORT, ROADS AND BUILDINGS (R-II) DEPARTMENT.***

11. With this background facts of the case, let me look at the award passed by the Land Acquisition Officer. The first paragraph of the award itself indicates that the Land Acquisition Officer has not applied his mind to the various contentions raised by the petitioners. I deem it appropriate to refer the first paragraph and it is thus:

> "Whereas an extent of land measuring Ac:4-16 and situated in the village of Atmakur and Pinnapuram in the Mandal of Atmakur in the registration sub-district of Kurnool in the Dsitrict of Kurnool and registered in the name of, or occupied by the persons specified below, has been declared by State Government at page 1 and 2 of the Kurnool District Gazette A.P.Gazette 16 dated 24-7-1999 to be needed for foreshore formation the undersigned after full enquiry into the case and due consideration of the various circumstances connected with acquisition as here before set forth, makes the following award under his hand".

The subsequent portion of the award relates to only the calculation of the amount under various heads. The Gazette Notification dated 24-7-1999 relates to the acquisition of Ac:15-56 cents along with trees thereon. There is subsequent notification, where under, trees have been exempted. There is no justification for the Land Acquisition Officer to confine the award only for Ac:4-16 cents having issued notification under Section 4(1) of the Act in respect of Ac:15-56 cents. The petitioners were not put on notice that the rest of land is an assigned land. It clearly indicated that the Land Acquisition Officer has not at all applied his mind to the material brought on record. Therefore, the award passed by the Land Acquisition Officer is not in consonances with the provisions of the Act and thus, it is liable to be set aside.

12. Accordingly, the Writ Petition is allowed setting aside the award dated 1-7-2002 and thereby directing the Land Acquisition Officer-third respondent to pass the award under Section 11 of the Act as per the directions given in W.P.Nos. 6497 of 2001 and 20026 of 2001 dated 20-11-2001 within three months from the date of receipt of a copy of this order. No order as to costs.

06-09-2005

sj